(A)

No. 93-1660

In The

Supreme Court of the United States

October Term, 1994

STATE OF ARIZONA,

Petitioner,

v.

ISAAC EVANS,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Arizona

JOINT APPENDIX

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Petition For Certiorari Filed April 14, 1994
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The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to the Petition for Writ of Certiorari:

RELEVANT DOCKET ENTRIES

DATE	ENTRY
March 27, 1991	Respondent filed motion to suppress all evidence seized as result of his arrest.
April 15, 1991	After an evidentiary hearing, the trial court granted the motion to suppress.
May 3, 1991	Petitioner filed notice of appeal from order granting motion to suppress.
May 19, 1992	Arizona Court of Appeals issued opinion reversing the trial court's order granting motion to suppress.
January 13, 1994	Arizona Supreme Court issued opinion vacating the Court of Appeals' opinion and affirming the trial court's order granting the motion to suppress.

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Attorney for Defendant

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, v. ISAAC EVANS, Defendant.	No. CR 91-00513 MOTION TO SUPPRESS EVIDENCE (Evidentiary Hearing and Oral Argument Requested) (Assigned to the Honorable Thomas W. O'Toole – Div. 32) (Filed Mar. 27, 1991)

COMES NOW the defendant, by and through undersigned counsel, and moves this Court to suppress any and all evidence seized or obtained as a result of the arrest of the defendant. It is defendant's contention that he was arrested in violation of the Fourth and Fourteenth Amendments to the United States Constitution. This Motion is further supported by the attached Memorandum of Points and Authorities.

Respectfully submitted this 26th day of March, 1991.

DEAN W. TREBESCH
MARICOPA COUNTY PUBLIC
DEFENDER

By /s/ Stephen Whelihan
STEPHEN WHELIHAN
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND:

The following factual summary is based on Phoenix Police Departmental Report #10010363 as well as evidence to be adduced at the hearing on this motion.

On January 5, 1991 at approximately 6:30 p.m., Phoenix Police Officers Sargent and Lumley stopped Isaac Evans for driving the wrong way down Washington Avenue, a one way street. Officer Sargent obtained identification from Mr. Evans and ran a computer check which indicated an outstanding warrant for his arrest, number 9004145, for Failure to Appear in Central Phoenix Justice Court on a charge of Driving with a Suspended License. Officer Sargent then arrested Mr. Evans based on the warrant.

While being handcuffed, Mr. Evans was ordered to open his fist and he allegedly dropped a marijuana cigarette which was seized as evidence. Police then searched the vehicle, and allegedly found a clear plastic bag containing marijuana under the passenger seat, which had been occupied by one Lois Ann Hornsby. Ms. Hornsby

was arrested for Possession of Marijuana and a subsequent search of her purse allegedly revealed marijuana seeds and cigarette rolling papers.

On December 19, 1990, Isaac Evans had appeared in Central Phoenix Justice Court and Justice of the Peace Richard Ortiz had ordered that warrant number 904145 be quashed.

LEGAL ARGUMENT:

Evidence obtained in a search incident to an invalid arrest is not admissible. *State v. Chudy*, 108 Ariz. 23, 492 P.2d 402 (1972). In the instant case, the arrest was based on a warrant which no longer had any legal effect. Therefore the arrest was not valid. The evidence seized in this case was obtained as a direct result of the invalid arrest and must therefore be suppressed.

In *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (App. 1989) the defendant was stopped for a traffic violation and a records check showed an outstanding warrant. The defendant was arrested and a search of his pockets revealed narcotics. It was subsequently learned that the warrant had been quashed prior to the defendant's arrest. Suppression of the evidence by the trial court was upheld by the Court of Appeals.

In *Greene*, the State's appeal relied on *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984), in which the "good faith" of the arresting officer in executing a search warrant which was subsequently found to be based on less than probable cause was held to justify the court's refusal to apply the exclusionary rule. The

Supreme Court reasoned that the purpose of the exclusionary rule, deterrence of police misconduct, is not served where the invalid search is based on judicial error. The *Greene* court found that the exclusionary rule does apply where the police department is responsible for not keeping its computer entries up to date.

CONCLUSION:

The arrest of Isaac Evans, which resulted in the seizure of evidence in this case, was invalid because it was based on a warrant which had been quashed. The "good faith" exception to the exclusionary rule is inapplicable in this case because it was police error, not judicial error, which caused the invalid arrest. Therefore, any and all evidence seized as a result of the invalid arrest must be suppressed.

Respectfully submitted this 26th day of March, 1991.

DEAN W. TREBESCH
MARICOPA COUNTY PUBLIC
DEFENDER

By /s/ Stephen Whelihan
STEPHEN WHELIHAN
Deputy Public Defender

Copy of the foregoing motion
mailed/delivered this 26th
day of March, 1991 to:

HON. THOMAS W. O'TOOLE
Judge of the Superior Court

KIM N. STUART
Deputy County Attorney

By /s/ Stephen Whelihan
STEPHEN WHELIHAN
Deputy Public Defender

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

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Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, vs. ISAAC EVANS, Defendant.	NO. CR 91-00513 **STATE'S RESPONSE TO MOTION TO SUPPRESS EVIDENCE** (Assigned to the Honorable Thomas W. O'Toole, Div. 30) (Filed Apr. 3, 1991)

COMES NOW, the State of Arizona, by and through undersigned counsel, and respectfully requests that Defendant's Motion be denied based on the following Memorandum of Points and Authorities.

Respectfully submitted this 3 day of April, 1991.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY /s/ Kim N. Stuart
Kim N. Stuart
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

The State adapts [sic] the facts set out in Defendant's Motion with the following additions: When stopped the Defendant was asked for his driver's license. He responded that he didn't have it because it was suspended. The computer check revealed the warrant and confirmed the fact that Defendant's license was suspended.

The warrant was issued for Failure to Appear on driving on a suspended license. It was issued on December 13, 1990. The warrant was issued out of East Phoenix I Justice Court and quashed by the Justice of the Peace in Central Phoenix Justice Court.

The standard procedure in quashing a warrant is for a clerk in the Justice Court to notify the Maricopa County Sheriff's Office that the warrant has been quashed. The Sheriff's office then removes it from the computer. When the Justice Court notifies the Sheriff's office a notation is made in the file to that affect [sic] indicating who called and who at the Sheriff's office was spoken to. In this case, there is no such notation indicating the Sheriff's office was not notified that the warrant was quashed. (See attached exhibit). The Sheriff's office has no record of being notified that the warrant was quashed.

ARGUMENT:

Defendant was arrested for both the warrant and for driving on a suspended license, which is a class one

misdemeanor. A.R.S. §13-473. The fact that Officer Sargent articulated the arrest as being for the warrant and not for the suspended license in no way means that Defendant could not validly be arrested on the driving violation. The subjective state of mind of the officer is not controlling. The question of whether the arrest of Defendant is valid turns on an objective assessment of the officer's action in light of the facts known to him at the time, not on his subjective motivation. *Scott v. United States*, 436 U.S. 128, 98 S.Ct. 1717, 55 L.Ed 2d 168 (1978).

"[T]he fact that the officer does not have the State of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Scott, supra* at 138. Clearly Defendant was subject to arrest (and was in fact arrested) for driving on a suspended license. The arrest therefore was valid and the evidence resulting from the search incident to the arrest is admissible. See *United States v. Rambo*, 789 F.2d 1289 (1986).

In any event, the officer acted in good faith in arresting the Defendant pursuant to a warrant that appeared to be valid. A.R.S. §13-3925 provides that evidence shall not be suppressed if "the Court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation." Here, the officer acted upon a warrant which he believed to be valid. This is both a "good faith mistake" under §13-3925(c)(1) since if the warrant was valid it would constitute probable cause to arrest and a "technical violation" under §13-3925(c)(2) since the officer relied on a warrant which was later invalidated due to a good faith mistake.

In this case the warrant was issued on December 13, 1990, quashed on December 19, 1990 and the arrest occurred on January 5, 1991. This is a total of 23 days from issuance and only 17 days from quashing. This all took place during the holiday season when things are very hectic, people are on vacation, and due to the holidays the number of actual working days is less. It appears the Justice Court was tardy in relaying the information that the warrant was quashed to the Sheriff's office. Under the circumstances existing here, it was reasonable for the officer to have relied on the warrant.

State v. Greene, 162 Ariz. 383, 783 P.2d 829 (App. 1989) cited by the Defendant does not deal with the Arizona good faith statute. In addition, in *Greene* there was a delay of eight months between the quashing of the warrant and the arrest. The decision is *Greene* turns on the Court's finding that the police department (negligently or deliberately) caused the warrant to still be in the computer. Applying the exclusionary rule would, (the Court felt) deter the police department from failing to keep its computer entries up to date.

Here there is evidence that it was not the doing of the Phoenix Police Department that the warrant was still in the computer and the delay was only 17 days during the holiday season. Suppressing the evidence in this case would in no way deter police misconduct.

"[T]he rationale for the exclusionary rule is that by making the evidence obtained inadmissible, the police are not rewarded for violating a defendant's constitutional rights, and that such conduct will be deterred in the future." *State v. Nahee*, 155 Ariz. 114, 116, 745 P.2d 172

(App. 1987). Suppressing the evidence in this case will not further the purpose of the exclusionary rule.

"If you were to look only at the actions of the arresting officer of the South Tucson Police Department, the conclusion would be that the ends of the exclusionary rule would not be advanced by holding the evidence inadmissible. However, *under the facts of this case* one must look beyond his actions and focus on the actions of the South Tucson Police Department." (Emphasis added) *Greene, supra* at 384-385. *Greene* is sufficiently distinguishable from the case at bar that this court has no need to look beyond the actions of Officer Sargent.

Based on the foregoing, Defendant's Motion should be denied.

Respectfully submitted this 3 day of April, 1991.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY /s/ Kim N. Stuart
Kim N. Stuart
Deputy County Attorney

Copy of the foregoing
mailed/delivered this
3 day of April, 1991,
to:

The Honorable Thomas W. O'Toole
Judge of the Superior Court

Stephen Whelihan
Deputy Public Defender
132 South Central
Phoenix, AZ 85004
Defense Attorney

BY /s/ Kim N. Stuart
Kim N. Stuart
Deputy County Attorney

KS:jd
4.3.7

TRAFFIC CALENDAR

PLEASE PRINT

NAME: ISAAC EVANS

STREET ADDRESS:

APARTMENT NUMBER:

CITY: STATE: ZIP:

HOME PHONE: WORK PHONE:

CITATION NUMBERS:

OUR CASE NUMBER: TR- 90-04145/46/47/48-CR

DATE		CLERK
DEC 1 2 1990	A M: Δ FTA	
	Δ in custody for [illegible] -	
	at time of IA	
	Custody status now → [illegible]	
	[illegible]	
	[illegible] B/W.	
	Not in Custody - Released on 12-5-90	[illegible]
	ENTERED EOP	
DEC 1 9 1990	Δ appeared [illegible] Financial	
	Statement DR & [illegible]	[illegible]
12-19-90	Δ appeared: quash warrant, release	
	OR - set for PTC. 2-26-91 @ 1:30 -	
		[illegible]
	ENTERED EOP	

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
Plaintiff,	)	
vs.	)	No. CR91-00513
ISAAC EVANS,	)	
Defendant.	)	
_____	)	

Phoenix, Arizona
April 15, 1991

BEFORE: The Honorable I. SYLVAN BROWN, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing: Motion to Suppress

MICHAEL N. VACCA
Official Court Reporter

Prepared for Appeal

[p. 4] Phoenix, Arizona
April 15, 1991
10:27 a.m.

THE COURT: CR91-00513, State of Arizona versus Isaac Evans. This is the time regularly set for the evidentiary hearing on the defendant's Motion to Suppress.

Is the State ready?

MR. STUART: Yes, Your Honor. Kim Stuart for the State.

THE COURT: Defense?

MR. WHELIHAN: Yes, Your Honor. Steven Whelihan appearing on behalf of the defendant, who is present and out of custody.

THE COURT: You may proceed.

MR. STUART: Thank you, Your Honor. I would call Officer Sargent.

BRYAN, SARGENT, called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STUART:

Q. Would you state your name, please?

[p. 5] A. Bryan Thomas Sargent.

Q. What is your occupation?

A. Police Officer, City of Phoenix.

Q. How long have you been so employed?

A. Four and-a-half years.

Q. What is your present assignment?

A. Patrol officer.

Q. Let me draw your attention to January 5th of 1991. What was your assignment at that time?

A. Patrol still.

Q. Were you on duty on that day about 6:30 p.m.?

A. Yes, I was.

Q. Did you have occasion to be in the area of 620 West Washington?

A. Yes, I was.

Q. Is that in Phoenix, Maricopa County, Arizona?

A. Yes.

Q. While there, what were you doing there?

A. I was turning in paperwork. That is the main police station. I was turning in paperwork there for another arrest.

Q. Where were you located?

A. We were parked right in front there.

[p. 6] Q. You were parked in a vehicle?

A. Yes.

Q. Was there anyone with you?

A. Another officer, Lumley, was with me.

Q. While you were there, did you observe something that drew your attention?

A. Yes.

Q. What was that?

A. We observed a vehicle traveling on the wrong way of a one-way street.

Q. Washington is a one-way street?

A. Yes.

Q. One-way going west?

A. Westbound.

Q. This vehicle was going eastbound?

A. Yes.

Q. What did you do?

A. We activated our overhead lights and made a U-turn to stop this vehicle.

Q. Did the vehicle stop?

A. Yes.

Q. Any problems in the stop?

A. No.

Q. Did you approach the driver?

A. Yes. We approached each other.

[p. 7] Q. Is the driver present in the courtroom today?

A. Yes, he is.

Q. Would you point him out, please?

A. He is sitting at the other table, in the brown suit.

THE COURT: Let the record indicate that the witness has indicated the defendant.

MR. STUART: Thank you, Your Honor.

BY MR. STUART:

Q. Did you – as you approached the driver, the defendant, did you ask him for a driver's license?

A. Yes, I did.

Q. What did he say?

A. He said he didn't have one because he didn't have it because it is suspended.

Q. Did you proceed to get some information, some identifying information from him?

A. Yes, I did. He didn't have any I.D., so I took his name.

Q. Did you have occasion, then, to run that name in your computer?

A. Yes, I did.

Q. And that is contained within your police vehicle?

[p. 8] A. Yes, it is.

Q. Did you get a response to your inquiry?

A. Yes.

Q. What did that indicate?

A. The one response I got from M.V.D. was that his license was suspended.

Q. Did you make any other inquiries?

A. Yes. We also checked him for warrants, and he did have a warrant, misdemeanor warrant.

Q. At that time, did you know what that misdemeanor warrant was for?

A. No.

Q. After you received that information, what did you do?

A. I went back to Mr. Evans, and I advised him that he was under arrest for the warrant.

Q. And what action did you take at that time?

A. I escorted him over to my police car, where we searched him and handcuffed him.

Q. Prior to your handcuffing, did you observe him make any – do anything with his hands?

A. He had had his hands in his front pocket, I think, most of the time. And then when I approached him and told him he was under arrest for the warrant, he had taken his hand out of his pocket.

[p. 9] Q. Did you have any trouble placing the handcuffs on the defendant?

A. Yes, I did.

Q. Can you describe what that was?

A. Mr. Evans is a muscular individual, and he was having a little trouble getting his hand behind his back. He had his left hand clenched in a fist, which was making it more difficult for me to turn his hand to get the – cuff him.

I asked him to relax his hand so I could put handcuffs on.

Q. Did he in fact do that?

A. He finally did after two requests.

Q. And did you observe anything happen when he relaxed his hand?

A. As soon as he opened his hand, a rolled cigarette fell to the ground from his hand.

Q. You mean like a handrolled cigarette?

A. Yes.

Q. What did you do at that time?

A. Well, I put the cuffs on him, and then I had him take a seat in the back seat of the patrol car.

Q. Did you take any action, or have any action taken with respect to this handrolled cigarette?

A. Yes. Officer Lumley recovered the [p. 10] cigarette.

Q. Did you look at the cigarette?

A. Yes, I did.

Q. Did you reach a conclusion as to what was contained in the cigarette?

A. Yes, I did.

Q. What was that?

A. The cigarette smelled like it possibly contained marijuana.

Q. Did you then seize that cigarette?

A. Yes.

Q. Did you have occasion then to search the vehicle?

A. Yes, we did.

Q. And would this have been pursuant to the arrest?

A. Yes.

Q. Let me ask you this: Did you also place the defendant under arrest for the driving on suspended license that you observed?

MR. WHELIHAN: Objection. Leading.

THE COURT: Sustained.

BY MR. STUART:

Q. Did you have occasion to search the vehicle?

A. Yes.

[p. 11] Q. What was the basis for searching the vehicle?

A. Incident to the arrest.

Q. Was there anything found in the vehicle?

A. Yes. We found a baggie of a large quantity for usable amount of green leafy substance underneath the passenger seat. We believed it to be marijuana.

Q. Was there a passenger in the vehicle?

A. Yes, there was.

Q. Prior to the search, had you asked her to step out?

A. Yes, I had.

Q. Did Officer Lumley search her person?

A. Yes, she did.

Q. Did she find some items of contraband in her purse?

A. Yes, she did.

Q. What was that?

A. She found a package of cigarettes, rolling papers, and some marijuana residue.

Q. Going back to Mr. – excuse me, to the arrest of the defendant, did you have occasion at some time after that you had arrested him to call to confirm the warrant?

A. Yes, we did.

[p. 12] Q. And what happened on that call?

A. Well, we contacted our I-Bureau, because it was a Phoenix warrant, and we were advised that the warrant was still good.

Q. Did you also arrest the defendant for driving on a suspended license?

A. Yes, we did.

MR. WHELIHAN: Objection.

THE COURT: Oh, the objection is sustained.

Counsel, you asked a question that way; it was objected to and sustained. That is not right to ask him.

MR. STUART: It was objected to as leading, and that is not a leading question.

THE COURT: It is a leading question. You could have asked him what else he arrested him for. He already testified he arrested him based on the warrant, and for no other reason. And if you keep asking him enough, maybe he'll agree with you.

MR. STUART: All right.

THE COURT: The objection is sustained, and the answer is stricken.

BY MR. STUART:

Q. What else did you arrest him for, if anything?

[p. 13] A. We arrested him for the suspended driver's license and for possession of marijuana.

Q. During –

THE COURT: Do you normally arrest people for driving on a suspended license, or do you normally write them a citation?

THE WITNESS: Your Honor, usually I write them a citation.

THE COURT: Right.

MR. STUART: That was my next question, Your Honor.

THE COURT: Very good.

BY MR. STUART:

Q. In this case, with respect to the defendant, if he had not had that warrant, would you have arrested him for driving on a suspended license?

A. Probably not.

MR. STUART: I have nothing further at this time, Your Honor.

THE COURT: You may examine.

MR. WHELIHAN: Thank you, Judge.

[p. 14] CROSS-EXAMINATION

BY MR. WHELIHAN:

Q. You testified that you probably would not have arrested the defendant but for the warrant. Is that right?

A. Yes.

Q. And usually when you stop someone and find out that they are driving on a suspended license, you would issue a citation.

A. I would, yes.

Q. And your decision as to whether you would take such a person into custody depends on their attitude towards you?

A. Sometimes, yes.

Q. In this case, Mr. Evans was very cooperative with you, wasn't he?

A. Yes, he was.

Q. So if it hadn't been for the warrant, you would have let him go, wouldn't you?

THE COURT: Counsel, that is asked and answered. He already said he would not have arrested him but for the warrant.

MR. WHELIHAN: That is all I have.

MR. STUART: Nothing further from this witness, Your Honor.

[p. 15] THE COURT: Thank you very much. You may step down.

(Witness excused.)

MR. STUART: Your Honor, I would like to call Frances Crossman.

FRANCES CROSSMAN, called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STUART:

Q. Would you state your name, please?

A. Frances Crossman.

Q. What is your occupation?

A. I'm the chief clerk of the East Phoenix Number One Justice Court.

Q. How long have you been the chief clerk over there?

A. Eight years there.

Q. Did you work over there prior to becoming chief clerk?

[p. 16] A. No.

Q. Have you worked in the Justice Court system prior to that?

A. Yes. I was at the Buckeye Justice Court as chief clerk for four years prior to that.

Q. And were you employed as chief clerk at East Phoenix One during the month of December and January of 1990 and 1991?

A. Yes, I was.

Q. Did you bring some records to court today at my request?

A. Yes, I did.

Q. Do they concern Mr. Isaac Evans?

A. Yes, they do.

Q. Do they indicate a bench warrant being issued for Mr. Evans?

A. Yes, it does.

MR. WHELIHAN: Judge, I think I object here, on the foundation. I don't know what records she's talking about.

THE COURT: Well, I take it –

MR. WHELIHAN: Whether there is a proper foundation for this coming in.

THE COURT: Have it marked. I guess you should establish the foundation, counsel.

[p. 17] MR. STUART: Yes, Your Honor.

THE COURT: We can have them copied and give her back the originals.

THE WITNESS: I did bring copies, if you want.

THE COURT: Counsel, she said she brought copies.

BY MR. STUART:

Q. How many copies did you bring?

A. Just the one set, here.

MR. STUART: Any objection to just marking the copies so we don't have to make copies of the originals and give them back?

MR. WHELIHAN: No. That is fine.

BY MR. STUART:

Q. What records did you bring with you?

A. I brought the entire file.

Q. Of Mr. Evans?

A. Right. I only copied the pertinent part about the issuance of the warrant.

Q. When you say the file, what file are you talking about?

A. We have a file with four separate traffic tickets in the file.

MR. WHELIHAN: Objection. This is irrelevant as to what the file is all about.

[p. 18] THE COURT: Counsel, there is no jury here. That is the file she brought. The objection is overruled.

BY MR. STUART:

Q. Why don't you tell us, while defense counsel is looking at the records, how these records come to be? How they start – how a file starts?

A. Basically, a file starts when we get the I.A. papers, initial appearance papers, the citation, and the DR from the officer. We make up a file at that time. The I.A. court gives us a date for the defendant to appear.

Q. Is that date noted in the record?

A. Yes, it is. He was to appear on December 12th of 1990.

Q. Do your records indicate whether or not he did appear?

A. He did not appear, and the judge made a notation that he was in custody in El Mirage and wanted us to check the jail to make sure that he was out of custody prior to issuing a bench warrant.

Q. Was that done?

A. Yes, it was. He was not in custody. He was released on December 5th.

Q. Was a bench warrant issued?

[p. 19] A. A bench warrant was issued on the next day. It was signed on the next day.

Q. Does your file indicate an appearance made by the defendant sometime after the issuance of the warrant?

A. Yes. On December 19th, the defendant appeared and saw a pro tem judge, who released him O.R. at that time.

Q. Does the file indicate a notation that the warrant should have been quashed?

A. Yes. It says, "Defendant appeared; quash warrant and release O.R.; set for pretrial."

Q. What is your procedure when you are going to quash a warrant?

A. We call the jail and advise them, or the Warrant Section, and advise them to quash the warrant, note on there that you have done it and who you talked to.

Q. In reviewing the records that you brought today, does it indicate that was ever done?

A. It was not done.

Q. The Sheriff's office was not notified that this warrant should have been quashed?

A. That's correct.

Q. Does your –

[p. 20] THE COURT: Is that any less State action, counsel? Just out of curiosity. I mean, you know.

MR. STUART: It is still State action, Your Honor, but it is a difference.

THE COURT: Thank you.

MR. STUART: It is a different agency.

THE COURT: Still State action. You agree with that.

MR. STUART: It is an agency of the State, yes.

THE COURT: Thank you.

BY MR. STUART:

Q. Does your file indicate again the next time that you received some kind of contact with Mr. Evans?

A. On February – excuse me, January 7th, we got I.A. papers stating he had been arrested under our warrant.

We immediately called the jail and told them that he had been released on our charges, faxed them a release order with his same pretrial date on it, and told them to release him on our charges.

Q. Is there any particular person who should be making these notations in the file, or is it just whoever happens to pick it up that particular day?

A. Generally, there are three clerks that work in our traffic area. Any one of the three could have [p. 21] done it. Or should have done it.

Q. And they would make the notation at the time that they were to make this call –

A. Right.

Q. And there is no indication that that call was made?

A. It was not done.

MR. STUART: I have nothing further at this time.

THE COURT: You may examine.

MR. WHELIHAN: Thank you, Judge.

THE COURT: I have one question, if you don't mind, before you examine.

MR. WHELIHAN: Go ahead.

THE COURT: How can you tell that the call was not made as opposed to the call having been made and somebody not making the notation?

THE WITNESS: Generally –

THE COURT: No. No. No. How can you tell from these records whether or not the call was not made, or whether the call was made and somebody forgot to write down the notation you normally make?

I want to know how you can tell that from the record.

THE WITNESS: Well, he was arrested on it.

[p. 22] THE COURT: No. No. How can you tell from the record whether or not the call was made or somebody failed to make the notation?

THE WITNESS: You really can't.

THE COURT: So your answer is you don't know if they called.

THE WITNESS: I don't know that they called. There is no notation that they called.

THE COURT: You may examine.

Q. Thank you, Judge.

CROSS-EXAMINATION

BY MR. WHELIHAN:

Q. You said there are three clerks working for the Justice of the Peace whose responsibility it would be to make this call?

A. That's correct.

Q. Would that be including you?

A. No. Three. I do not make the calls anymore.

Q. So among those three, how is it determined which one actually gets the responsibility for making the call on a particular case?

A. It varies by, you know, who is working, who [p. 23] is in the courtroom, who is doing plea agreements. Whoever is free generally makes the call immediately.

This notation is unusual because it was a pro tem, and the clerk didn't see it, so she didn't make it.

Q. So Justice of the Peace would make the decision, he'd make a notation in the file, and then he'd hand the file to one of the clerks?

A. Right. We usually get them back en masse, four or five files at a time. Sometimes we have 30 people in the courtroom all at one time, and as files are completed, we will get four or five back at a time from the judge.

Q. So then that clerk will take those four or five files and look through them to to [sic] see what has to be done?

A. Right.

Q. And then that clerk is supposed to immediately call the Sheriff's office to notify them that the warrant has been quashed?

A. That's correct.

Q. Does it ever happen that the clerk will not be able to reach the Sheriff's office by telephone?

A. No.

Q. Is there any procedure for checking to make [p. 24] sure that all – that these calls have been made?

A. They are supposed to double-check files before they file them away.

Q. That would be the same clerk responsible for looking at the file to begin with?

A. Right. They do calendar; they did do all the other things they were supposed to do, but not that one portion of it.

Q. Since this case has come up in recent weeks, has your office received telephone calls from the Sheriff's office regarding this?

A. Not from the Sheriff's office, no.

Q. From some other agency?

A. The County Attorney asked for information on it.

Q. Did the Phoenix police call your agency regarding this?

A. No, they have not.

MR. WHELIHAN: That is all I have, Your Honor.

MR. STUART: I have a –

THE COURT: Did you offer Exhibit 1, counsel?

MR. STUART: Excuse me?

THE COURT: Were you going to offer Exhibit 1?

MR. STUART: I am, Your Honor. To make things better, I will offer Exhibit 1 in evidence at this point.

[p. 25] THE COURT: Any objection, counsel?

MR. WHELIHAN: No, Judge.

THE COURT: Exhibit 1 will be admitted.

REDIRECT EXAMINATION

BY MR. STUART:

Q. Is it normal procedure, standard practice in your office, that when the judge issues a warrant quashed, that a call be made, and that call be notated in the file?

A. Yes, it is.

Q. Are your clerks trained to do that?

A. Yes. Could I clarify something to explain how it happened?

Q. Sure.

A. We just recently had a change of judge. Our judge was defeated in election. So right at this time, we had pro tems in, not our regular judge. On December 12th is our old judge's writing. He always made his notations at the very bottom: "Prepare warrant; quash warrant."

He would write in great big letters, so he would, you know – it would come to your attention.

[p. 26] So we had a pro tem that wrote it small in the middle of the thing, setting it for pretrial. That is why the Clerk missed it.

MR. WHELIHAN: Objection. This is all speculation on the part of the witness.

THE COURT: Sustained.

MR. STUART: I have no further questions, Your Honor.

THE COURT: Anything further? May this witness be excused?

MR. WHELIHAN: Just recross. I just wanted to ask something I believe was raised, which is having to do with the training of the clerks.

RECROSS-EXAMINATION

BY MR. WHELIHAN:

Q. What are the names of the three clerks that would have been responsible on December 19, or would have been employed by the Justice of the Peace December 19th?

A. Would have been Trudy Hunter, Mary Ellen Munguia and Janice Daniels were the three clerks at that time.

Q. How long has Trudy been working?

A. Trudy is assistant supervisor, and she's [p. 27] been there four years.

Q. And how long has Mary Ellen been working there?

A. She's worked there almost four years, also.

Q. And how long has Janice been working?

A. Janice was a little over a year as a transfer from Scottsdale Justice Court, where she worked a year.

It probably would have been Mary Ellen or Trudy that should have quashed it. Janice was mostly inputting tickets and doing additional work.

Q. In your eight years as a chief clerk with the Justice of the Peace, have there been other occasions where a warrant was quashed but the police were not notified?

A. That does happen on rare occasions.

Q. And when you say rare occasions, about how many times in your eight years as chief clerk?

A. In my particular court, they would be like maybe one every three or four years.

Q. When something like this happens, is anything done by your office to correct that problem?

A. Well, when this one happened, we searched all the files to make sure that there were no other ones in there, which there were three other ones on that same [p. 28] day that it happened. Fortunately, they weren't all arrested.

MR. WHELIHAN: That is all I have. Thank you.

THE COURT: Anything further, Mr. Stuart?

MR. STUART: No, Your Honor.

THE COURT: May this witness be excused from further attendance?

MR. STUART: Yes.

MR. WHELIHAN: Yes,

THE COURT: You may step down. You are excused from further attendance.

(Witness excused.)

MR. STUART: Your Honor, I would like to call Emily Luna.

EMILY LUNA,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

[p. 29] DIRECT EXAMINATION

BY MR. STUART:

Q. Could you state your name, please?

A. Emily Luna.

Q. What is your occupation?

A. Sheriff's records clerk.

Q. And where do you work?

A. At the Sheriff's office.

Q. How long have you worked there?

A. It will be two years in September.

Q. Are you assigned to any particular – you said the Records Department. But is that broken down into any littler departments?

A. Yes.

Q. And where do you work?

A. Well, we rotate, so it depends.

Q. Where are you working now?

A. I am working in O.I.C., Operations Information Center.

Q. And would you have been working there in December and January – December of '90 and January of '91?

A. Yes.

[p. 30] Q. Are you familiar with the procedures in the Sheriff's office for – what you do when a call comes in quashing a warrant?

A. Yes.

Q. What are those procedures? What do you do?

A. The call comes in through the court clerk of where the warrant is issued out of. We have recall warrants list, which is when that call comes in, we go and write down there. We get out the sheet. We go and put the date that we received the call, the time, the person that is calling the quash in, and the court that the quash is from. We ask the last name, first name, middle name of the subject that the warrant is on, his date of birth, the warrant number and the date that it was issued.

Q. And this would all be written down on a record somewhere?

A. It is called a warrant recall list.

Q. After that information is taken, what is done to recall the warrant?

A. We pull the active file out, and we pull the jacket, verify that that is the right information, the right warrant that we have pulled out.

On the active card, we go ahead and put the date that the call was received, by whom, and what court [p. 31] called it in. We go ahead and clear it out of the system.

Once it is cleared, we go ahead and run a warrant check to make sure that it has been cleared. And we date it and put our A number and stamp it cancelled.

Q. Did you have occasion to check records of the Sheriff's office, the records that you referred to, with respect to a person named Isaac Evans?

A. Did I, myself?

Q. Were records checked on Isaac Evans?

A. Yes.

Q. Do you have those records with you?

A. Yes.

Q. Do you know whether they reflect the – you heard the testimony from Frances Crossman when you were in court?

A. Yes.

Q. With respect to that warrant that the testimony was where a warrant was issued on December 13, 19___

MR. WHELIHAN: I'm going to object to this. I don't know which records he's referring to. There was a reference to the checking the records.

THE COURT: I don't know what records you are referring to, either, counsel. I think maybe you ought

[p. 32] to have them marked if they exist so counsel will get an opportunity to look at them, too, before she testifies from them.

BY MR. STUART:

Q. Did you bring copies, or are these the originals?

A. Those are copies.

Q. Let me show you what has been marked State's Exhibit 2 for identification. These records, what are they?

A. It is called a warrant recall list. And these are the quashes that we called – got called on to have the warrant quashed.

Q. And this is the recall list that you talked about?

A. Yes.

Q. Let me show you that list. What are the dates contained on that list?

A. Through December 18 – through December 20.

Q. Is there notation on that list that a quash was called in on Isaac Evans?

A. No.

MR. WHELIHAN: I'm going to object and move to strike on the basis that she's testifying to hearsay.

THE COURT: Yeah. The Exhibit is not in [p. 33] evidence. Sustained.

You should have objected first, counsel.

MR. STUART: Excuse me?

THE COURT: She's testifying from an exhibit not in evidence, but, no, as to just what the dates were, is that what you are objecting to?

MR. WHELIHAN: No.

THE COURT: The last question –

MR. WHELIHAN: The last question, I object and move to strike.

THE COURT: The dates come in, but the last question doesn't until it gets into evidence.

MR. STUART: Your Honor, at this time, I would move Exhibit 2 into evidence.

THE COURT: Do you have any objection?

MR. WHELIHAN: I'm not sure that a proper foundation has been laid.

THE COURT: Yeah. They are records kept in the ordinary course of business in the Sheriff's office. She said she uses that list routinely and makes it up on a daily basis.

The objection is overruled. Exhibit 2 may be admitted.

Now you can ask your question.

MR. STUART: Thank you, Your Honor.

[p. 34] BY MR. STUART:

Q. With respect to Exhibit 2, does that indicate that a call was ever received quashing the warrant on Isaac Evans?

A. No.

MR. STUART: Your Honor, I have nothing further of this witness.

THE COURT: You may examine.

CROSS-EXAMINATION

BY MR. WHELIHAN:

Q. Miss Luna, based on just looking at the records, you are not able to say whether the call was received and the person receiving the call failed to write it down, just from looking at the records, are you?

A. No. I'm pretty sure we wouldn't have received it.

Q. Based on the regular practice?

A. Right.

Q. But you don't know whether in this case the call was received and the clerk failed to make a notation, do you?

A. No.

Q. Do you know who would have answered the [p. 35] phone December 19th or December 20th?

A. No. Well, it is just that we rotate shifts, and I am not sure who was working on that day.

MR. WHELIHAN: That is all I have.

MR. STUART: I don't believe I have any other questions, Your Honor.

MR. WHELIHAN: I'm sorry. If I may?

THE COURT: Did you forget something?

MR. WHELIHAN: Yes.

THE COURT: Go ahead.

BY MR. WHELIHAN:

Q. I just wanted to clarify some of your testimony on direct.

When the call is received, a notation is made on the recall warrant list, and then you said that the warrant is pulled out. Can you explain what you mean by that?

A. Well, the in file.

Q. So this is a piece of paper that you actually pull out of a file?

A. It is a jacket. The jacket is pulled.

Q. And then you make notations on a card that is inside the jacket?

A. No. The card is actually in a different file, so we have the jacket against the wall, and then [p. 36] the active file is in the file drawer.

Q. After going to the jacket and then going to this card that we are referring to, then the procedure is to clear out the system. Is that what you said?

A. Clear the warrant out of the system.

Q. And what does that involve?

A. You have to actually – do you want the format.

Q. On a computer, you make an entry onto a computer that removes it from the data bank of the computer. Is that right?

A. Yes.

Q. And then you run a check to see whether –

A. You run it through the computer again to make sure it shows cleared.

Q. Is there a procedure for police officers to call to confirm whether the warrant has been quashed?

A. Yes.

Q. Whether a warrant is still –

A. Yes.

Q. That would be to call your records department?

A. Yes.

Q. And then you would then check?

A. We go ahead and check the active file, and [p. 37] if there was one, then we would go ahead and pull the jacket from the file.

MR. WHELIHAN: No further questions.

MR. STUART: Your Honor, if I might?

THE COURT: Certainly.

REDIRECT EXAMINATION

BY MR. STUART:

Q. In this case, if someone had called to check the warrant on Isaac Evans, they would have found the warrant to be active. Is that correct?

A. Yes.

MR. STUART: I have nothing further, Your Honor.

THE COURT: May this witness be excused from further attendance?

MR. STUART: Yes. Your Honor.

MR. WHELIHAN: Thank you.

THE COURT: Thank you. You may step down. You are excused.

THE WITNESS: Thank you.

(Witness excused.)

[p. 38] MR. STUART: Your Honor, the State has no further evidence on this, on the motion.

THE COURT: Defense?

MR. WHELIHAN: We will not be introducing any further evidence, Your Honor.

THE COURT: It is your motion to suppress, counsel.

MR. WHELIHAN: Thank you, Judge.

The defense is moving to suppress this evidence because it was obtained as a result of an invalid arrest. The testimony has shown that the warrant was quashed on December 19th, and that the only reason Officer Sergeant arrested Mr. Evans was that warrant. Since that warrant was invalid, the arrest is invalid, and the fruits of

the arrest, the marijuana cigarette and the other marijuana found in the car, are fruit of the poisonous tree of the invalid arrest. Therefore, they should be suppressed.

The State's response to the defense's position, I think, can be divided basically into two arguments. In the first argument, they say well, the subjective state of mind of the police officer doesn't matter.

THE COURT: That is not really an issue in the case. The arrest was made on the warrant. That is clear [p. 39] from the evidence. We don't have that issue.

MR. WHELIHAN: So I take it that the first argument that the State makes may be put aside.

THE COURT: That's correct.

MR. WHELIHAN: Then I take it that the issue is whether the good faith exception to the exclusionary rule applies.

Our position is that this is all State action, and that the exclusionary - the purposes of the exclusionary rule would be served here by making the clerks for the court, or the clerk for the Sheriff's office, whoever is responsible for this mistake, to be more careful about making sure that warrants are removed from the records, and saving citizens from unwarranted intrusions on their right to move around.

In the case of State versus Greene, the defendant was arrested on a warrant that had been quashed eight months before. The State finds a distinction in that case in that here there was only 17 days that had passed since the warrant was quashed.

There was testimony that in order to get the word out, it was merely a matter of making a phone call and making an entry into the computer. This is the computer age. We don't need weeks of delay in order to get the word out.

[p. 40] There is also – the State also argues that this was during the holiday season, and I guess that somehow excuses it. This may explain what happened, but it doesn't excuse it.

THE COURT: Mr. Stuart?

MR. STUART: Thank you, Your Honor.

If I might, I would like to make one point on the first part of my response.

THE COURT: You certainly may.

MR. STUART: I think it is a valid response. If an officer arrests – walks up to somebody and says, "You are under arrest for disorderly conduct," and arrests him, searches him and finds something, it turns out really there was no disorderly conduct that would sustain an arrest, but in fact the guy was validly trespassing and the officer could have arrested on the trespassing, the courts would look to the objective circumstances, see that there could have been a valid arrest for trespassing, if you will, and uphold that search based on the objective circumstances and not on what the officer had in his head, and the officer was mistaken in what he articulated, but there was a valid arrest.

THE COURT: Mr. Stuart, the fact is that the police officers do not arrest for driving on suspended

license. This officer testified that he ordinarily does [p. 41] not arrest.

MR. STUART: I understand that, Your Honor.

THE COURT: And in this case, he would not have arrested him for driving on a suspended license. So let's get to the issue of the warrant. That is what he arrested him on.

MR. STUART: I am moving on. He could have arrested –

THE COURT: There is no question, he could have arrested him for driving the wrong way on a one-way street, probably. I don't know whether that is a criminal or civil traffic violation anymore, but, you know, you can arrest people for lots of things. The fact is he was arrested on the warrant, and there is no doubt that is what he was arrested for.

MR. STUART: That's correct. Let me move on to the good faith.

I think the State has made the case here that distinguishes this case from State versus Greene. The Court is aware in Greene that the case turns on the fact that essentially the court assumed it was the South Tucson Police Department's fault that this warrant wasn't quashed. They say something to the effect there is no evidence one way or the other, but we're going to go ahead and assume that that is the case, and it is going [p. 42] to serve the purpose of the exclusionary rule to suppress the evidence in that case, and that is going to teach the police department a lesson, essentially, that they are going to have to keep these up to date.

In this case, the State has presented evidence that it was not the police department's doing, nor was it the Sheriff's department doing, but it was the doing of the justice court. Through their negligence, or whatever term you want to use, they didn't pick it up; they didn't notify the Sheriff's office, who then couldn't take it out of the computer.

The Officer did what he had to do; what he's required by law to do when he finds a warrant. As far as he knew, it was a valid warrant.

If you read the court notes in the Greene case, that they even say that; that the Officer's action would fall within the good faith exception other than the fact that the police agency, itself, they found, was the one who didn't take it out.

In this case, it is not the police agency; it is the justice court. It is not going to serve the ends of the exclusionary rule to suppress the case here. It makes no difference to the justice court. They are not going to change their practice. It is not going to change the practice of the police department in this [p. 43] case, because they are acting on a valid warrant, or a warrant that to them was valid. They could not do any more than they did to find out what had happened.

You know, all the cases on the exclusionary rule, the case that the State has stated, Nahee, the Green case, itself, indicates what the purpose is. And the purpose is not going to be served here. It is not going to deter any kind of police conduct to suppress the evidence in this case. The police did what they should have done. The police did what they had to do here. And it was the fault,

if you will, of the Justice Court for not entering that. And suppressing the evidence here is not going to affect the Justice Court at all.

The State would submit, based on its argument and the motion, that – or its response, that the motion should be denied.

THE COURT: It is my understanding, Mr. Stuart, that it is State action that triggers the entire issue of motions to suppress. And whether that State action is the police, the Sheriff, the Court, or anybody else. You make a distinction, it being different parts of State action.

MR. STUART: I do. It is a different situation because it is the exclusionary rule at work here. And the good faith doctrine. It is not – it is not the [p. 44] typical State action.

If you look at the Greene case –

THE COURT: I looked at it very carefully.

MR. STUART: They make it clear –

THE COURT: Well, they make it clear that what they are trying to do is deter negligence; in that case, to deter the negligence of the Tucson – South Tucson Police Department, or whatever. And in this case, perhaps the negligence of the Justice Court, or the negligence of the Sheriff's office. But it is still the negligence of the State.

See, the problem is I think the Greene case is really not that good. I think the police officer is bound to arrest. I think that is his duty. I think he would be derelict in his duty if he failed to arrest.

MR. STUART: That's correct.

THE COURT: There is no question in my mind about it. But unfortunately, they didn't empower me to overrule the Court of Appeals. And, you know, the distinction between 17 days and eight months is a distinction without a difference. The fact is if it were 24 hours, you might be able to find some reason.

The fact is the Court of Appeals has held – in my opinion, I would not have held the same way – but the Court of Appeals has held that when you arrest on an [p. 45] invalid warrant which was quashed, and should have been taken out of the computer, that the evidence seized as a result of that arrest has to be quashed.

I think the police did exactly what they had to do. But the Court of Appeals doesn't. And perhaps Division One of the Court of Appeals may feel differently about it than Division Two. But I'm bound by Division Two's decisions also. And their decision says it has to be quashed. It has to be suppressed.

MR. STUART: I understand. But the State's contention, I'm sure the Court understands –

THE COURT: I understand.

MR. STUART: This doesn't fall within the ambit of Greene, because it wasn't the police department's fault. And we have proved that.

THE COURT: I understand. But it is the State's fault. I can't find a distinction between State action, whether it happens to be the police department or not.

You know, I told you, I would have held differently. I can't overrule the Court of Appeals. The Supreme Court, apparently, as far as I can determine, there are no other cases decided by Division One on this same issue.

MR. STUART: I have not found one on this particular point.

[p. 46] THE COURT: Right. Neither have I.

Motion to Suppress is granted.

MR. STUART: Your Honor, in light of that, obviously, the State is not going to be prepared to proceed to trial.

THE COURT: I take it you would like to dismiss without prejudice?

MR. STUART: That's correct, Your Honor. We are contemplating appealing to see if Division One will disagree.

Thank you, Your Honor.

THE COURT: Any objection to the motion to dismiss without prejudice?

MR. WHELIHAN: No, Judge. I would ask that it would be with prejudice.

THE COURT: Yeah. No, I think the State has an absolute right to appeal that issue.

It will be ordered granting the State's motion to dismiss without prejudice.

MR. STUART: Thank you, Your Honor.

THE COURT: Court will stand at recess.

[p. 47] I Michael N. Vacca, do hereby certify that the foregoing pages constitute a full accurate typewritten record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED this 22nd day of May, 1991

/s/ Michael N. Vacca
Official Court Reporter

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

THE STATE OF ARIZONA, Appellant, vs. ISAAC EVANS, Appellee.	) No. 1 CA-CR 91-663)) Maricopa County Superior) Court No. CR 91-00513))

APPELLANT'S OPENING BRIEF

(Filed Jun. 28, 1991)

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STATEMENT OF THE CASE

The State charged appellee with possession of marijuana, a class 6 felony. (Instruments, Item No. 15.) It later added an allegation that appellee had five prior felony convictions. (*Id.*, Item No. 19.)

On March 27, 1991, appellee filed a motion to suppress the marijuana, arguing that it was the fruit of an invalid arrest. (*Id.*, Item No. 28.) At the evidentiary hearing on the motion, Officer Bryan Sargent testified that he had stopped appellee for driving the wrong way on a one-way street. (R.T. of Apr. 15, 1991, at 6.) When the officer asked for appellee's driver's license, appellee responded that he did not have one because it had been suspended. (*Id.*, at 7.) Officer Sargent then obtained appellee's name and ran a computer check on it. (*Id.*)

The computer showed that appellee's license was suspended and that there was a misdemeanor warrant for his arrest. (*Id.*, at 8.) After checking with the I-Bureau and being told that the warrant was still valid, Officer Sargent told appellee he was under arrest and began to handcuff him. (*Id.*, at 8, 12.) Officer Sargent testified that he would not have arrested appellee had it not been for the warrant. (*Id.*, at 13.) Appellee's left hand was clenched, making it difficult to get the handcuffs on, so the officer asked him to relax his hand. (*Id.*, at 9.) As appellee opened his hand, a cigarette fell to the ground. (*Id.*) Officer Sargent's partner picked the cigarette up and the officers determined that it was a marijuana cigarette. (*Id.*, at 9-10.)

Officer Sargent then searched appellee's car and found a baggie of marijuana under the passenger seat. (*Id.*, at 10-11.) He also found rolling papers and marijuana

residue in the purse of the woman who had been sitting in the passenger seat. (*Id.*, at 11.)

Frances Crossman, the chief clerk for the East Phoenix Justice Court, testified that the warrant had been issued on December 12, 1990, after appellee failed to appear on several traffic tickets. (*Id.*, at 18-19.) On December 19, 1990, however, appellee had appeared before a pro tem judge and the warrant had been quashed. (*Id.*, at 19.) Normally, the court clerk then calls the Sheriff's Office to tell them the warrant had been quashed. (*Id.*) There was no indication in appellee's justice court file that the Sheriff's Office had been notified of the quashed warrant. (*Id.*, at 19, 22.) After the clerk's office learned that the quashing of appellee's warrant had not been communicated to the Sheriff's Office, they checked other warrants quashed on the same day as appellee's and found three others where the Sheriff's Office had not been notified. (*Id.*, at 27-28.) The records clerk from the Sheriff's Office confirmed that there was no record of a call from the justice court quashing appellee's warrant. (*Id.* at 34.)

At the end of the hearing, the trial court granted the motion to suppress. (*Id.*, at 45-46.) It then granted the State's motion to dismiss the case without prejudice. (*Id.*)

The State filed a timely notice of appeal. (Instruments, Item No. 34.) This Court has jurisdiction pursuant to Ariz. Const. Art. 6, §9, and A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE MOTION TO SUPPRESS.

The trial court based its ruling on the theory that the marijuana was the fruit of an unlawful arrest of appellee even though the officer had no knowledge that the arrest warrant had been quashed. Although it disagreed with the case, the trial court felt that *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), required suppression of the marijuana. Appellant submits that the *Greene* decision does not control here, and that the exclusionary rule does not require suppression of the marijuana.

The purpose of the exclusionary rule is to deter future police conduct by precluding evidence obtained as a result of police violations of a defendant's constitutional rights. *Michigan v. Tucker*, 417 U.S. 433, 94 S.Ct. 2537, 41 L.Ed.2d 182 (1974). Thus, in applying the rule, it is important to focus upon *whose* conduct is involved. *State v. Nahee*, 155 Ariz. 114, 745 P.2d 172 (Ct. App. 1987).

Here, there is no police misconduct to be deterred by applying the exclusionary rule. The arrest occurred a little more than two weeks after the warrant had been quashed. Before Officer Sargent arrested appellee on the warrant, he contacted the I-Bureau and was told that the warrant was still valid. The evidence shows that the justice court clerk's office had failed to inform law enforcement authorities that the warrant had been quashed. No negligence or misconduct was attributable to the police department. Thus, when Officer Sargent arrested appellee, he was acting on a good faith belief

that the warrant was valid. *See* A.R.S. §13-3925. Accordingly, the trial court should not have suppressed the marijuana.

The *Greene* decision does not require a different result. After a police officer stopped Greene for a traffic violation, a records check showed an outstanding warrant from the City of Tucson. The officer then arrested Greene and found narcotics in his pocket during a search incident to that arrest. The police later discovered that the city court had quashed the warrant eight months before Greene's arrest. Division Two of the Court of Appeals made the following statements in explaining its decision to affirm the trial court's order suppressing the narcotics:

> If police misconduct, whether it be negligent or deliberate, caused or contributed to the arrest notation being in the computer system, the police department would be responsible for not keeping its computer entries up to date. No evidence was presented to the trial court establishing that the police department was blameless in having the arrest warrant notation in its computer system.

State v. Greene, 162 Ariz. at 384, 783 P.2d at 830. The court concluded that, under these circumstances, application of the exclusionary rule would tend to deter the police department from deliberately or negligently failing to keep its records up to date.

In this case, unlike *Greene*, the State presented evidence showing that the justice court clerk's office, not the police department, was responsible for not removing appellee's warrant from the system. The police department can hardly be termed negligent for failing to

remove a less than 3-week-old warrant when it had received no notice from the justice court that the warrant had been quashed. Since there is no police misconduct to deter by application of the exclusionary rule, the trial court abused its discretion in granting the motion to suppress.

CONCLUSION

The evidence established that the police had no reason to know that the arrest warrant for appellee had been quashed. The arrest of appellee was based on a good faith belief that the arrest warrant was valid. Therefore, based upon A.R.S. §13-3925 and the rationale underlying the exclusionary rule, the trial court abused its discretion in suppressing the evidentiary fruits of that arrest.

RESPECTFULLY SUBMITTED this 28th day of June, 1991.

RICHARD M. ROMLEY
MARICOPA COUNTY
ATTORNEY

By /s/ Gerald R. Grant
Gerald R. Grant
Deputy County Attorney

[Certificate of Service Omitted in Printing]

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellant, v. ISAAC EVANS, Appellee.	No. 1 CA-CR 91-663 Maricopa County Superior Court No. CR-91-00513

APPELLEE'S ANSWERING BRIEF

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STATEMENT OF THE CASE

Evans generally accepts the state's presentation of the case, with three exceptions.

The state asserts that Officer Sargent checked, with the I-Bureau, the validity of the warrant *before* he handcuffed and arrested Evans. (Opening Brief at p. 1, hereafter OB.) This is contrary to the record. On direct-examination Sargent made it reasonably clear that he arrested Evans, and handcuffed him too, before he checked with the I-Bureau. (R.T. 8, lines 13-19, April 15, 1991.) Later, still on direct, Sargent made this explicit. (*Id.* at 11, lines 21-25.)

Secondly, the state asserts that "the quashing of appellee's warrant had not been communicated to the Sheriff's Office." (OB, p. 2.) But this is only one inference that may reasonably be drawn from the record. More importantly, it is not the inference this Court is required to proceed on. The other inference is that the call was made but the justice court failed to make a note of it. The trial judge very quickly understood that this was the alternate, and equally reasonable, inference that could be drawn; because he realized it he forced the justice court clerk to concede that she did not know whether the call had been made or not. (R.T. 22, lines 1-8, April 15, 1991.)

Thirdly, the state asserts the justice court found, for the same day, three other cases, "where the Sheriff's Office had not been notified." (OB, p. 2.) Again, this is only one inference. All the clerk's office could be sure it found was that there were three other cases where no notation was made. (R.T. 27-28, April 15, 1991.)

Finally, with respect to the Statement of the Case in the Opening Brief the reader will observe that Evans, it is alleged, "had five prior felony convictions." (OB, p. 1.) Why does the state tell us this since it has absolutely nothing to do with the issue on appeal? Does the state wish to have the case decided on the basis that Evans is a bad guy? Perhaps the state will tell us in its reply brief.

ARGUMENT

THE TRIAL COURT, IN GRANTING EVANS' MOTION TO SUPPRESS, DID NOT ABUSE ITS DISCRETION.

The trial court's ruling on a motion to suppress must be upheld unless it is shown that he clearly abused his discretion. *State ex rel. Collins v. Superior Court*, 132 Ariz. 180, 644 P.2d 1266 (1982). Here there is no showing of any abuse at all.

This case, like many cases, turns upon how one views the record. The rule is that, on appeal, the facts must be viewed in that light which will sustain the ruling of the trial court on the motion to suppress. *State v. Gerlaugh*, 134 Ariz. 164, 654 P.2d 800 (1982), Supplemented, 135 Ariz. 89, 659 P.2d 642 (1983). Evans pointed out earlier in this brief that there are two inferences, equally reasonable, that can be drawn from this record. One is that the justice court failed to call the sheriff about the quashed warrant. The other is that the justice court did call the sheriff, but forgot to make a note of it. Between these inferences, the latter is the one that will sustain the trial court's ruling. This Court is therefore required to take it

as a *fact* that the justice court called the sheriff and told him that the warrant had been quashed. *Gerlaugh*.

Given that fact, *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (App. 1989) is on all fours with this case and should control its outcome unless this Court wishes to disagree with its Division Two brethren.

CONCLUSION

On the basis of *State v. Greene* the appellee asks that the trial court be affirmed.

Respectfully submitted,

DEAN W. TREBESCH
MARICOPA COUNTY
PUBLIC DEFENDER

By /s/ James H. Kemper
JAMES H. KEMPER
Deputy Public Defender
Attorney for Appellee

[Certificate of Service Omitted in Printing]

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

THE STATE OF ARIZONA,)
Appellant,
vs.
ISAAC EVANS,
Appellee.

) No. 1 CA-CR 91-663
) Maricopa County Superior Court No. CR 91-00513

APPELLANT'S REPLY BRIEF

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ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE MOTION TO SUPPRESS.

The question presented here is whether the exclusionary rule requires the suppression of evidence obtained following an arrest, where that arrest was based on an outstanding warrant that was later found to have been quashed. Appellant submits that the purpose of the exclusionary rule (to deter future police misconduct) is not served by applying it in this case.

The record shows that Officer Sargent saw appellee commit a traffic offense: driving the wrong way on a one-way street. When the officer stopped appellee for that offense, appellee admitted he was guilty of another offense: driving on a suspended license. The officer then ran a computer check and confirmed that appellee's license was suspended and also learned that there was a misdemeanor warrant for appellee's arrest. He also checked with the I-Bureau and was told that the warrant was still valid. (R.T. of Apr. 15, 1991, at 6-8.) Based upon this record, there is no police misconduct to deter by applying the exclusionary rule. Officer Sargent did everything that can be expected of an arresting officer.

Appellee, however, relying on *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), argues that the police department failed to keep its computer entries of outstanding warrants up to date, and that future misconduct of this sort will be deterred by application of the exclusionary rule. The facts in this case are distinguishable from those in *Greene*. Appellee's arrest occurred less than 3 weeks after the warrant had been quashed, not

more than 8 months as in *Greene*. Also, the prosecutor, unlike the prosecutor in *Greene*, presented evidence supporting the conclusion that the police department was blameless in having the warrant in its computer system.

Further, appellant submits that *Greene* is not well-reasoned. The rationale behind the exclusionary rule is stretched a bit thin when the rule is applied to deter clerical workers in the police department rather than police officers in the field. The situation in this case comes within the provisions of A.R.S. §13-3925: a police officer making an arrest based on a good faith belief that the arrest warrant was valid. Therefore, the trial court erred in granting the motion to suppress.

CONCLUSION

The evidence established that the police had no reason to know that the arrest warrant for appellee had been quashed. The arrest of appellee was based on a good faith belief that the arrest warrant was valid. Therefore, based upon A.R.S. §13-3925 and the rationale underlying the exclusionary rule, the trial court abused its discretion in suppressing the evidentiary fruits of that arrest.

RESPECTFULLY SUBMITTED this 5th day of August, 1991.

RICHARD M. ROMLEY
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Gerald R. Grant
Deputy County Attorney

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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA Appellant/Respondent, v. **ISAAC EVANS,** Appellee/Petitioner.	)	No. 1 CA-CR 91-663 Maricopa County Superior Court No. CR-91-00513 **PETITION FOR REVIEW**

Isaac Evans, through counsel undersigned, asks for review by the Arizona Supreme Court. Rule 31.19, A.R.Crim.P., 17 A.R.S.

I. Synopsis Of The Decision Of The Court Of Appeals.

The petitioner's motion to suppress physical evidence, marijuana, was granted in the Superior Court for Maricopa County. The Court of Appeals, in a published opinion, decided that the Superior Court had abused its discretion and reversed by a two to one vote, Judge Claborne dissenting. The opinion is attached.

II. Issues Decided By The Court Of Appeals.

The only issue presented to and decided by the Court of Appeals was whether the trial court abused its discretion in granting the motion to suppress.

III. Material Facts.

On January 5, 1991, at about 6:30 in the evening, Officers Sergent and Lumley of the Phoenix Police Department were sitting in a marked patrol car finishing up some paperwork when they saw a car going the wrong way on a one-way street. It is not difficult to see how this caught their attention since they were parked directly in front of the main police station. They pulled the car over.

This petitioner, Isaac Evans, was the driver. The two policemen got Evans' name, punched it in their computer, found there a misdemeanor warrant for Evans' arrest, arrested him, and then searched Evans and the car. In Evans' hand the officers found a marijuana cigarette. In the car, under the passenger seat, the officers found a baggie of marijuana.

It turned out that the warrant was invalid. It had been quashed, 17 days before, in the justice court from which it issued. The normal procedure when this happens is that any one of three clerks will call the warrant section of the Sheriff's Office to say that the warrant should be taken out of the computer because it has been quashed. Whichever clerk does this, in the normal procedure, will note in the justice court file that she has done it. In this case the justice court file bore no such notation.

None of the three clerks testified. No one could say the call had not been made.

The normal procedure at the warrant division of the Sheriff's Office is this. That division maintains something called a "warrant recall list." When a call comes in from a justice court that a warrant has been quashed the information is written on the "warrant recall list." Then the necessary entries are made to remove the warrant from the computer. A check is run to be sure the warrant has in fact been removed.

The "warrant recall list" had no entry that the Evans warrant was to be quashed. But no one could say the call had not come in.

IV. Why The Petition Should Be Granted.

There are two reasons why this petition should be granted.

A. The majority of the Court of Appeals is in conflict with a critical principle of appellate review, the principle that, on appeal, the evidence must be viewed in the light which will sustain the ruling of the trial court. *State v. Gerlaugh*, 134 Ariz. 164, 654 P.2d 800 (1982). It is difficult to understand this since the majority cited, and therefore paid lip service to this principle. (Slip op. p. 4.)

The majority followed this by pointing out that there were two inferences that could be drawn from the evidence presented at the hearing on the motion to suppress. (Slip op. p. 4, n.1.) Those inferences, equally reasonable, were that the call to remove the warrant had not been

made or that the call had been made, but not memorialized. The inference that would support the decision of the trial court was the latter, but the Court of Appeals majority adopted the former. In so doing it misapplied, while paying homage to, one of the cardinal mechanical principles that controls the way appeals are decided.

The Court of Appeals is a mere error-correction court. This Court is, by contrast, this state's law-articulation court. In this capacity it speaks to the *substance* of a wide variety of issues, from homicide to summary judgment, from the rule making power of the Corporation Commission to the termination of parental rights.

But this Court has failed, for the most part, to spend much time addressing the mechanical principles by which all these substantive issues are decided on appeal. For example, the vast majority, one has to think, of Arizona appellate issues are decided under the abuse of discretion standard. Yet this Court's best exegesis of this standard of review is buried in a footnote. *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983). Footnote 18 to *Chapple* is a wonderful footnote indeed. But the cardinal mechanical principles of appellate review should not be found in footnotes. They should be set forth boldly and clearly in the body of opinions. This Court should grant review in this case so that, in the body of a published opinion, it can explain exactly what it means and how it works to view the facts in that light which will sustain the ruling of the trial court.

B. The majority also held that, regardless of anything else, the trial court should not have granted the motion to suppress because of Arizona's "good faith

exception statute," A.R.S. § 13-3925. (Slip op. pp. 8-9.) This holding, by two members of a Division One panel, is in irreconcilable conflict with the dissent (Slip op. pp. 10-11), with another panel (unanimous) of the same court, *State v. Peterson*, 94 Ariz. Adv. Rep. 58 (1991, Petition for Review filed October 18, 1991), and with Division Two of the same court (unanimous). *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (1989). This Court should grant review to resolve this conflict.

CONCLUSION

For the reasons advanced Evans asks for review of this case. **RESPECTFULLY SUBMITTED** this 26 day of May, 1992.

DEAN W. TREBESCH
MARICOPA COUNTY PUBLIC DEFENDER

By /s/ James H. Kemper
JAMES H. KEMPER
Deputy Public Defender

Copy of the foregoing petition
delivered this 26 day
of May, 1992, to:

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By /s/ James H. Kemper
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IN THE SUPREME COURT OF THE
STATE OF ARIZONA

STATE OF ARIZONA,	)	No. _____
Appellant,	)	
	)	Court of Appeals
vs.	)	No. 1 CA-CR 91-663
	)	
ISAAC EVANS,	)	Maricopa County Superior
Appellee.	)	Court No. CR 91-00513
	)	
	)	RESPONSE TO
	)	PETITION FOR REVIEW
	)	
_____	)	(Received June 25, 1992)

The State asks this Court to deny the petition for review. Reasons supporting this request are set forth in the following memorandum.

Respectfully submitted this 25th day of June, 1992.

RICHARD M. ROMLEY
MARICOPA COUNTY
ATTORNEY

BY /s/ Gerald R. Grant
Gerald R. Grant
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

Police officers arrested appellee on an outstanding misdemeanor warrant. As one officer was handcuffing him, appellee dropped a marijuana cigarette. The officer then searched appellee's car and found a baggie of marijuana under the passenger seat.

Appellee later moved to suppress the marijuana, arguing that it was the fruit of an unlawful arrest. At the suppression hearing, the State presented evidence that the misdemeanor warrant had been issued by the East Phoenix Justice Court a little more than three weeks before the marijuana seizure. The warrant had been quashed, however, a week after it was issued. The normal procedure in this situation is that the justice court clerk calls the Sheriff's Office, notifies that office that the warrant has been quashed, and makes a note in the justice court file that the call has been made. There was no notice in appellee's justice court file that the Sheriff's Office had been notified of the quashed warrant. The records clerk from the Sheriff's Office testified that there was no record of a call from the justice court regarding the quashing of appellee's warrant. The trial court granted the motion to suppress, finding that *State v. Greene*, 162 Ariz. 383, 783 P.2d 829 (Ct. App. 1989), required suppression of the marijuana.

The State appealed from this decision. On May 19, 1992, the court of appeals filed an opinion reversing the trial court's decision.

The State first asks this Court to deny review because the exclusionary rule does not require suppression of the marijuana. The purpose of the exclusionary rule is to deter future police misconduct. *Michigan v. Tucker*, 417 U.S. 433, 94 S.Ct. 2537, 41 L.Ed.2d 182 (1974). The police officers in this case did everything that can reasonably be expected of them. Before arresting appellee, the officer contacted his I-Bureau and was told that the warrant was still valid. The State presented evidence strongly suggesting that the justice court clerk's office had failed to inform law enforcement authorities that the warrant had been quashed. Under these circumstances, there was no police misconduct to be deterred in the future by application of the exclusionary rule.

Second, appellee argues that the court of appeals failed to view the evidence in the light most favorable to sustain the trial court's ruling. This argument is based on the premise that there were two equally reasonable inferences to be drawn from the evidence: one, that the clerk's office had not called the Sheriff's Office, and two, that the call had been made but not memorialized. The State disagrees that these inferences are equally reasonable. Neither the clerk's office nor the Sheriff's Office had any record of the call, and the clerk's office files also contained no records that the Sheriff's Office had been contacted regarding three other warrants quashed on the same day as appellee's. Based on this evidence, the more reasonable inference is that the call was not made and

therefore the trial court clearly abused its discretion in suppressing the evidence.

Third, appellee argues that this Court should grant review to resolve a conflict between divisions of the court of appeals regarding the applicability of Arizona's "good faith exception" statute. Appellee claims that *State v. Peterson*, 94 Ariz. Adv. Rep. 58 (Ct. App., Sep. 5, 1991), and *State v. Greene*, are in conflict with the opinion in this case. *Peterson* and *Greene* are distinguishable on their facts. In *Peterson* the quashed warrant was 5 years old. Also, in neither of those cases did the State present evidence to show that the presence of a quashed warrant in the police department's computer files was not the result of police negligence. In this case, the State presented evidence showing that the justice court clerk's office failed to notify police that the warrant had been quashed. Therefore, the decision in this case is not in conflict with *Peterson* or *Greene*.

In conclusion, appellee has failed to show that the court of appeals erred in deciding this case. Therefore, the State asks this Court to deny the petition for review.

Respectfully submitted this 25th day of June, 1992.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

By /s/ Gerald R. Grant
Gerald R. Grant
Deputy County Attorney

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